COURT OF APPEALS
DECISION
DATED AND FILED

November 7, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2766 **Cir. Ct. No. 1999CF640**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES BLUNT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Charles Blunt appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2003-04)[1] motion. Blunt claims the trial court

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

erred in ruling that his claims are procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and ***State v. Tillman***, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574. Because Blunt failed to raise his concerns about his trial counsel's advice in his direct (no-merit) appeal, and failed to provide this court with sufficient reason for not raising this issue in the direct (no-merit) appeal, we conclude that the trial court did not err in ruling that Blunt is procedurally barred from raising the claims in this appeal. Accordingly, we affirm.

BACKGROUND

¶2 In April 1999, Blunt pled guilty to first-degree reckless homicide, while armed, as a habitual criminal and felon in possession of a firearm. He was sentenced to thirty-five years on the homicide charge and five years consecutive on the possession of a firearm charge. Blunt's appellate counsel filed a no-merit report. The no-merit report addressed the validity of Blunt's guilty plea and the trial court's exercise of sentencing discretion. Blunt filed a response to the no-merit report, challenging the validity of his guilty pleas and the court's sentencing discretion.

¶3 This court reviewed the no-merit report, Blunt's response and conducted an independent review of the record. We concluded that there were no meritorious issues to pursue on appeal. Specifically, we held:

> The transcript of the trial court's extensive plea colloquy, counsel's detailed explanation, and Blunt's guilty plea questionnaire and waiver of rights form demonstrate compliance with WIS. STAT. § 971.08(1) (1997-98) and ***State v. Bangert***, 131 Wis. 2d 246, 267-72, 389 N.W.2d 12 (1986). *See also* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (a completed plea questionnaire and waiver of rights form is competent evidence of a knowing, intelligent and voluntary plea). The

> record belies Blunt's conclusory, nonspecific claims that these problems [limited intellect and emotional distress] affected his guilty pleas, or would have caused him to proceed differently. We independently conclude that further proceedings, to explore any claimed manifest injustice or reason for a lesser sentence, would be futile.

State v. Blunt, No. 00-1582-CR-NM, unpublished slip op. at 3 (WI App June 15, 2001). In 2004, Blunt filed a *pro se* ***State v. Knight***, 168 Wis. 2d 509, 484 N.W.2d 540 (1992) petition, which this court denied because the petition failed to sufficiently allege ineffective assistance of appellate counsel.

¶4 On October 21, 2005, Blunt filed a *pro se* motion to withdraw his guilty plea to first-degree reckless homicide. Blunt alleged that he pled guilty based on bad advice from his trial counsel. The trial court denied Blunt's postconviction motion on the grounds that it was procedurally barred under ***Tillman*** and ***Escalona-Naranjo***. Specifically, the trial court ruled:

> [Blunt] contends that the elements of the offense do not comport with his activity and, therefore, he did not enter his guilty plea knowingly and intelligently.
>
> A notice of appeal was previously filed in this case, in which counsel filed a no merit report and to which the defendant responded. The Court of Appeals found that defendant had entered his plea knowingly, intelligently and voluntarily. There is no reason set forth in the defendant's motion why he did not raise the current issue in response to the no merit report, and the court perceives no reason why he could not have done so. The issue is therefore deemed waived. *See* State v. Tillman, 281 Wis.2d 157, 696 N.W.2d 574 (Ct. App. 2005). Accordingly, the defendant is barred by State v. Escalona-Naranjo, 185 Wis.2d 169, 178 (1994), from pursuing the current motion for postconviction relief.

Blunt appeals from this order.

DISCUSSION

¶5 Blunt sought plea withdrawal in his response to the no-merit report. We rejected his contention and concluded that Blunt's plea was knowingly, voluntarily and intelligently made. Now, in the current appeal, Blunt again seeks plea withdrawal. This time, he contends that trial counsel provided him with bad advice regarding pleading guilty in that his trial counsel did not give him an accurate explanation of the elements of the crime. Blunt could have raised this reason during his direct appeal. He did not. Accordingly, he is procedurally foreclosed from doing so here. Defendants are not permitted to pursue an endless succession of postconviction remedies:

> We need finality in our litigation. Section 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion. Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation.

Escalona-Naranjo, 185 Wis. 2d at 185. Thus, claims which could have been, but were not, raised in a prior postconviction motion or on direct appeal, are procedurally barred unless a sufficient reason for failing to raise the issue is presented. ***Id.***

¶6 The ***Escalona-Naranjo*** rules apply with equal force where the direct appeal was conducted pursuant to the no-merit process of WIS. STAT. § 809.32. *See* ***Tillman***, 281 Wis. 2d 157, ¶¶19-20 (The procedural bar applies to defendants whose direct appeal was via the no-merit procedure, as long as the no-merit procedures were in fact followed, and the record demonstrates a sufficient degree of confidence in the result.).

¶7 Here, the record demonstrates that the no-merit process procedures were followed and the record demonstrates a sufficient degree of confidence in the result. This court reviewed the issues raised in the no-merit report, in Blunt's response, and any other potentially meritorious issues, which necessarily included whether counsel provided ineffective assistance. We concluded that there were no meritorious issues. Accordingly, under these circumstances, Blunt has failed to demonstrate that any sufficient reason exists for failing to raise the issues he raises now during his earlier appeal.

¶8 Based on the foregoing, we conclude that the trial court did not err in summarily denying Blunt's postconviction motion based on the procedural bar of ***Escalona-Naranjo*** and ***Tillman***.[2]

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[2] This case is distinguishable from our recent decision in ***State v. Fortier***, 2006 WI App 11, 289 Wis. 2d 179, 709 N.W.2d 893. Here, the no-merit procedures were followed and do carry a sufficient degree of confidence to warrant application of the procedural bar. Such was not the case in ***Fortier***.